

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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UNITED STATES )  
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v. )  
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JARBIR JAVIER VELASQUEZ,  
Defendant. )  
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Criminal No. 2004-M-0496-RBC

**JOINT SENTENCING MEMORANDUM**

Defendant Jarbir Javier Velasquez and the government hereby submit this Joint Sentencing Memorandum to aid the Court in sentencing.

On December 22, 2004 Mr. Velasquez pled guilty to a one-count Information charging him with entry into the United States without proper documentation in violation of 8 U.S.C. § 1325 (a)(1), a Class B misdemeanor. Mr. Velasquez' plea was made pursuant to a written plea agreement under which both parties agreed to recommend a sentence of six months imprisonment (the statutory maximum) and the government agreed to dismiss the felony charge contained in the complaint pending against Mr. Velasquez. Since 8 U.S.C. § 1325(a)(1) is a Class B misdemeanor, the United States Sentencing Guidelines do not apply, and thus, no Presentence Report has been prepared in this case. Accordingly, set forth herein are factors that the Court may consider in determining the appropriate sentence to impose in this case. As discussed in more detail below, these factors include: (1) Mr. Velasquez' lack of any prior criminal record; (2) Mr. Velasquez' strong work ethic and family circumstances; (3) the

existence of an Immigration and Customs Enforcement ("ICE") detainer; and (4) the government's agreement to forego prosecution of Mr. Velasquez on the charge contained in the complaint in this case, an aggravated felony under immigration law.

As recounted in the Pretrial Services Report prepared in connection with this matter, Mr. Velasquez is a citizen of Honduras and still has some family back in his village of El Progreso, Yoro. Mr. Velasquez has always been a serious, hardworking individual who has struggled to support his family. While in Honduras, Mr. Velasquez received formal school education and also taught himself photography, an area in which he worked for a number of years. More recently, Mr. Velasquez worked in a tortilla factory in order to provide support for his aging mother and his young son, who has resided with family members back in Honduras. Following the devastating effects of Hurricane Mitch, in which Mr. Velasquez' mother lost her house, Mr. Velasquez, his family and their entire neighborhood were relocated by the Honduran government due to the high risk of flooding in their area. After this move, Mr. Velasquez worked hard to provide the increasing monetary support needed by his mother, son and other relatives.

In an attempt to find better working wages to support himself and his family, Mr. Velasquez illegally entered into the United States in November 2002 and traveled to New York City, where he began living with his sister. While there, Mr. Velasquez worked to help his sister pay for housing and living expenses, as well as to send money back home to Honduras. He was very diligent about sending this financial support and increasingly took responsibility for providing for his mother and son.

Aside from the present matter, Mr. Velasquez does not have a criminal record in either

Honduras or the United States. He has no history of drug or alcohol use, nor any history of mental health problems.

Mr. Velasquez has already been in custody for over four and a half months, since his initial arrest on August 21, 2004 on a charge that the government has agreed to dismiss upon sentencing on the instant Information. He sought, but was denied, release pending the resolution of these proceedings. He is entitled to credit for prior custody from August 21, 2004. See 18 U.S.C. §3585(b)(2). An ICE detainer is lodged against him and will result in his transfer to ICE custody upon the conclusion of the period of incarceration imposed by this Court.

Respectfully submitted,  
JARBIR JAVIER VELASQUEZ,

by his attorneys,

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Dated: January 6, 2005